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Email: RBAUER@LSLLP.COM**FACSIMILE COVER SHEET****UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Tamas MAJOR et al.  
 App. No. : 10/035,360  
 Filed : December 28, 2001  
 Examiner : Melvin C. Marcelo  
 Art Unit : 2662  
 Title : NETWORK ELEMENT, AND ASSOCIATED METHOD, FOR  
FACILITATING COMMUNICATION OF DATA BETWEEN  
ELEMENT DEVICES  
 Docket No. : NOKIA.1001US  
 Customer No. : 43829

COMMISSIONER FOR PATENTS  
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ALEXANDRIA, VA 22313-1450

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Signature :   
Name : ROBERT M. BAUER

Transmitted herewith:

Request for Clarification of Office Action and for Withdrawal of Finality (3 pages)

**Lackenbach Siegel, LLP**

Date: June 21, 2006

Enclosures: (as listed above)

Total No. of pages, including this sheet: 4

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**REQUEST FOR CLARIFICATION OF OFFICE ACTION****AND FOR WITHDRAWAL OF FINALITY**

Sir:

Applicants gratefully acknowledge the Office Action dated April 20, 2006. Applicants respectfully submit that the Office Action is confusing as to the current basis for the anticipation rejection of claims 12 and 16. Applicants also submit that the finality of the office action is improper because there is a new indefiniteness rejection of claim 13. Applicants therefore hereby requests that the Office Action be clarified and that the finality of the Office Action be withdrawn.

**Anticipation Rejection of Dependent Claims 14 and 16 - Unclear**

In the previous Office Action dated October 4, 2005, dependent claims 12 and 16 were rejected because the features thereof were alleged to be inherent in the system illustrated in Figs. 7-11, 19 and 37 of U.S. Patent No. 6,850,495 issued to Baum et al. (this system hereinafter

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referred to simply as "Baum"). Claim 12 recited "wherein the prefix structure of the header portion of the data frame formed by said frame encapsulator remains unpopulated such that the data frame forms a "not tagged" frame and claim 16 recited "when said detector fails to detect the prefix structure to form part of the header portion, the data frame is indicated merely to be received at the first elemental device." The rejection specifically alleged that "[i]t is inherent that the Access Router generates data frames such as management messages in order to communicate its status with Administration Entity 1092 in Figure 10, wherein such control messages would be 'not tagged' since they do not originate from a logical ingress port, i.e. the data frame in Figure 37 would not have the Logical Ingress Port field populated)."

In the Amendment filed on February 6, 2006, Applicants argued that the features of dependent claims 12 and 16 were not inherent in Baum (see page 9, lines 3-19). Specifically, applicants called upon the Examiner to support the allegation of inherency as follows: "Applicants respectfully disagree with this statement, and request that prior art or other documents be provided to support the statement or the rejection based on presumptions and alleged inherencies be withdrawn."

The current Office Action now asserts that the features are indeed present in Baum. Specifically, the additionally states that "Net entities such as Customers 1030 in Figure 10 are tagged with logical port information since they are associated with an external port (column 8, lines 35-50), while Administration Entity 1090 is not associated with an external port).

Thus, the current Office Action is inconsistent about the basis for the rejection of claims 12 and 16. On the first hand, it alleges that the features are inherent, but then it alleges that the features are known from col. 8, lines 35-50, of the patent. A rejection based on inherency can be made when the prior art "seems to be identical except that the prior art is silent as to an inherent characteristic." See MPEP 2112, Part III. Thus, a rejection can be based either on the basis inherency or on the basis that the features are in the prior art reference, but not on both. Applicants are thus left at a loss as to how to respond. Should applicants address whether the features are inherent or address whether or not the features are known from col. 8, lines 35-50, of the patent? Clarification is needed so that applicants don't traverse one of the two bases of rejection only to be informed that the rejection is maintained on the other basis.

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**Indefiniteness Rejection- New**

The office action includes a new rejection of claim 13 as being indefinite under 35 USC 112, second paragraph. It is set forth in part 3 on page 3 of the Office Action. Specifically, the claim is rejected on the grounds that the first data source and second data source recited in claim 13 are unclear. These features were previously recited in claim 13 and were not added to claim 13 by the Amendment filed on February 6, 2006. Therefore, the finality of the Office Action should be withdrawn because it contains a new ground of rejection of claim 13 that was not necessitated by an amendment.

**Conclusion**

Applicants respectfully submit that the rejection of claims 12 and 16 in the current Office Action is confusing and unclear and request that the Office Action be supplemented or corrected to clarify the rejection. Applicants request that they be granted at least one month in which to respond to any such clarified Office Action. See MPEP 710.06.

Applicants also submit, that, because it contains a new ground of rejection for claim 13 that was not necessitated by amendment, the current Office Action has improperly been made final. Applicants request that the finality be withdrawn. See MPEP 706.07(d).

Please charge any fees due in connection with the filing of this Amendment, to Deposit Account No. 10-0100 (Docket. No. NOKIA.1001US) and please credit any overpayment or excess fees to such deposit account.

Respectfully submitted,



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